

1 BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
2 WESTERN WASHINGTON REGION
3 STATE OF WASHINGTON
4

5 HOOD CANAL SAND & GRAVEL LLC DBA
6 THORNDYKE RESOURCE, OLYMPIC
7 STEWARDSHIP FOUNDATION, J. EUGENE
8 FARR, WAYNE AND PEGGY KING, ANNE
9 BARTOW, BILL ELDRIDGE, BUD AND VAL
10 SCHINDLER, RONALD HOLSMAN,
11 CITIZENS' ALLIANCE FOR PROPERTY
12 RIGHTS JEFFERSON COUNTY, CITIZENS'
13 ALLIANCE FOR PROPERTY RIGHTS LEGAL
14 FUND, MATS MATS BAY TRUST, JESSE A.
15 STEWART REVOCABLE TRUST, AND
16 CRAIG DURGAN,

15 Petitioners,

16 v.
17

18 JEFFERSON COUNTY AND WASHINGTON
19 STATE DEPARTMENT OF ECOLOGY,

20 Respondents,
21

22 and
23

24 HOOD CANAL COALITION,

25 Intervenor.
26

Case No. 14-2-0008c

**ORDER DENYING MOTION FOR
DISCOVERY
AND
DENYING MOTION TO FILE A
RESPONSE TO REPLY**

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28 This matter comes before the Board upon Petitioners' Motion for Discovery filed June
29 27, 2014. Respondents Washington State Department of Ecology (Ecology) and Jefferson
30 County filed responses to the motion on July 3, 2014, and July 8, 2014, respectively. On
31 July 14, 2014, Petitioners moved to file a reply brief in response to Ecology and the County.
32 Petitioners seek discovery regarding Ecology and the County. The burden is on the party

1 seeking discovery to show that the proposed discovery would lead to evidence that would
2 be “necessary and of substantial assistance to the Board” in deciding this case.

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4 *Legal Authorities*

5 **RCW 36.70A.290** Growth management hearings board — Petitions —
6 Evidence.

7 (4) The board shall base its decision on the record developed by the city,
8 county, or the state and supplemented with additional evidence if the board
9 determines that such additional evidence would be necessary or of
10 substantial assistance to the board in reaching its decision.

11 **WAC 242-03-300** Discovery—Limitation

12 (1) Because the board bases its decision on the record developed by the city,
13 county, or state agency in taking the challenged action, discovery shall not
14 be permitted except in extraordinary circumstances upon an order of the
15 presiding officer.

16 (2) Insofar as applicable and not in conflict with this chapter, when discovery
17 has been authorized by the presiding officer, the statutes and court rules
18 regarding pretrial procedures in civil cases in superior courts of the state of
19 Washington shall be used.

20 (Emphasis added).

21 *Positions of the Parties*

22 Petitioners claim discovery is necessary to obtain information not within the record
23 and for the Board to evaluate certain process claims by Petitioners.¹ They argue discovery
24 will allow them to present information to the Board about Ecology’s improper interference
25 with Jefferson County’s process to adopt a Shoreline Master Plan (SMP) under the
26 Shoreline Management Act (SMA) and the Growth Management Act (GMA), about failure to
27 encourage public participation due to a bias against public and planning commission
28 comments, and about the impropriety of Ecology’s and the County’s incorporation of the
29 County’s Critical Areas Ordinance (CAO) into the SMP. Specifically, Petitioners want to
30 know under what authority an Ecology staff person made certain statements and there is
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¹ Petitioner’s Motion for Discovery (June 27, 2014), at 2 and 4.

1 nothing in the record showing consistency between the County's actions and the SMA.²
2 Petitioners explain there is no means by which to obtain information on these topics except
3 through discovery, thus extraordinary circumstances warrant discovery. Their request is
4 distinguishable from other cases in which the Board denied discovery because in those
5 cases, information was found in the record. Lastly, Petitioners' request for discovery is
6 specific and limited and thus will not burden the County nor cause delays in the
7 proceedings.³
8

9 Respondent Ecology opposes the request for discovery for the following reasons.
10 Petitioners' claims of improper interference or staff bias during the SMP process are not
11 within the Board's scope of review. Compliance with SMA and GMA must be made on the
12 record before the Board and included in that record are the comments from Ecology's staff.⁴
13 Likewise, the public participation processes are "well-documented" and are in the record.⁵
14 Failure to determine consistency between the County's actions and the SMA and GMA
15 when incorporating the Critical Area Ordinance is in the record.⁶ Petitioners had
16 opportunities to express their opinions which are included in the record.⁷ Lastly, Ecology
17 describes the burden it would face should deposition be required for their staff and they
18 explain that the large record of 27,000 pages contains sufficient information for the Board to
19 decide this case.⁸ Ecology Response contains exhibits from the record to substantiate its
20 argument.
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22 Respondent Jefferson County opposes the motion for discovery and argues
23 Petitioners' request lacks evidence showing "extraordinary circumstances" exist to grant
24 discovery. They claim the text of the challenged Master Program must be the sole factor in
25 deciding if it complies with GMA and SMA.⁹ The County cites information from the record
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28 ² *Id.* at 4.

29 ³ *Id.* at 4

30 ⁴ Ecology's Response to Petitioners' Motion for Discovery (July 3, 2014), at 3.

31 ⁵ *Id.* at 4.

32 ⁶ *Id.* at 4, Ecology points to the Final Consistency Report and Integration Strategy prepared by the County.

⁷ *Id.* at 5.

⁸ *Id.* at 5-6.

⁹ Jefferson County's Opposition to Motion of Petitioner Olympic Stewardship Foundation for Leave to Undertake Discovery (July 8, 2014) at 2.

1 about membership on committees and legislative actions by County elected officials.¹⁰
2 Deposing two staff members will not provide the Board with more information “necessary or
3 of substantial assistance to the Board” to decide the case.
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5 *Board Discussion and Analysis*

6 Pursuant to WAC 242-03-300(1), discovery shall not be permitted unless the
7 Presiding Officer finds extraordinary circumstances warrant seeking more information
8 outside the existing record. Petitioners’ arguments do not present evidence showing such
9 circumstances. Petitioners seek to depose two staff members from Ecology and the County
10 to show that improper interference occurred. However, the Board sees in Exhibit 5310 from
11 Ecology that this issue was already raised in the record and thus, the Board will have an
12 opportunity to review this claim from the record. Next, Petitioners request the depositions to
13 determine adequacy of public involvement. Ecology’s Exhibit 6263-68 and Jefferson
14 County’s Exhibit 2960-2446 contain information from the record about public involvement
15 opportunities. The Board will deliberate this issue based the record. Finally, through
16 depositions, Petitioners wish to demonstrate inconsistencies between the County’s
17 legislative actions and the SMA and GMA. In reviewing Exhibit 000301, the Board found
18 this is Jefferson County’s consistency analysis demonstrating how the County determined
19 consistency between its SMP and SMA and GMA. This exhibit is in the record.
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22 The Board finds and concludes Petitioners have not carried their burden of proof
23 demonstrating there are extraordinary circumstances warranting discovery. The Board will
24 address Petitioners issues from information in the record. The Board further finds that
25 discovery in this case will not supply more relevant information than currently exists. The
26 Board **denies** the Motion for Discovery.
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28 Petitioners also requested the opportunity to reply to Respondents. The Western
29 panel of the Board does not grant reply briefs and rarely grants oral arguments on reply.
30 The request for Reply Brief is **denied**.
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¹⁰ *Id.* at 4-5.

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ORDER

Petitioners' motion for discovery is DENIED.

Petitioners' motion for reply to response is DENIED.

DATED this 16th day of July, 2014.

Nina Carter, Presiding Officer